

R. B. Contracting Co. and Laborers' International Union of North America, Local No. 373, AFL-CIO. Case 6-CA-25436

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge and an amended charge filed by Laborers' International Union of North America, Local No. 373, AFL-CIO, the Union, the General Counsel of the National Labor Relations Board issued a complaint against R. B. Contracting Co., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge, the amended charge, and complaint, the Respondent failed to file an answer.

On July 1, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On July 7, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 15, 1993, notified the Respondent that unless an answer was received 3 business days following receipt of the letter, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a sole proprietorship owned by Raymond Bottoms and doing business as R. B. Contracting, with an office and place of business in Pittsburgh, Pennsylvania. It has been engaged as a contractor in the construction industry doing commercial construction. During the 12-month period ending March 31, 1993, the Respondent provided services valued in excess of \$50,000 for Landau Building Co., an enterprise within the Commonwealth of Pennsylvania which is directly engaged in interstate commerce. We find

that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About January 15, 1993, the Respondent discharged its employee Robert E. Whitsett and since that date has failed and refused to employ the employee. The Respondent discharged Whitsett because he joined and assisted the Union and engaged in other concerted activities, and to discourage employees from engaging in these and other concerted activities.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All laborers employed by the Respondent at its Homewood Mini Mall jobsite; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

About January 7, 1993, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the employees in the unit by entering into a collective-bargaining agreement with the Union for the period January 7, 1993, to the completion of the project known as the Homewood Mini Mall, without regard to whether the majority status of the Union has ever been established under the provisions of Section 9 of the Act.

For the period of January 7, 1993, to the completion of the Homewood Mini Mall project, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the employees in the unit.

About January 22, 1993, the Respondent failed to continue in effect all the terms and conditions of the agreement by repudiating the grievance/arbitration provision of the agreement. The Respondent engaged in this conduct without the Union's consent. The terms and conditions of employment are mandatory subjects for the purpose of collective bargaining.

CONCLUSIONS OF LAW

1. By discharging Robert E. Whitsett because he joined and assisted the Union and engaged in other concerted activities, and to discourage employees from engaging in these and other concerted activities, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act in violation of Section 8(a)(1) and has been discriminating in regard to the hire or tenure or terms or conditions of employ-

ment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. By failing to continue in effect all the terms and conditions of its collective-bargaining agreement by repudiating the grievance/arbitration provisions of the agreement, the Respondent has been failing and refusing to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to offer Robert E. Whitsett immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with backpay to be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharge, and to notify Whitsett that this has been done. We shall also order the Respondent to abide by its collective-bargaining agreement by adhering to the grievance/arbitration provisions of that agreement.

ORDER

The National Labor Relations Board orders that the Respondent, R. B. Contracting Co., Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they joined and assisted the Union and engaged in other concerted activities, and to discourage employees from engaging in these and other concerted activities.

(b) Repudiating the grievance/arbitration provisions of its collective-bargaining agreement with the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Robert E. Whitsett immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed, and make him whole for any loss of earnings or other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(b) Expunge from its files any and all references to the unlawful discharge and notify Whitsett, in writing, that this has been done.

(c) Bargain in good faith with the Union as the limited exclusive collective-bargaining representative of the unit employees with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment. Adhere to the terms of the collective-bargaining agreement with the Union, including the grievance/arbitration provisions, and schedule and conduct grievance meetings with the Union as required by the contract.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Pittsburgh, Pennsylvania, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. August 17, 1993

James M. Stephens,	Chairman
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Dennis M. Devaney,	Member
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John Neil Raudabaugh,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge our employees because they join or assist the Union or engage in other concerted activities, and to discourage employees from engaging in these and other concerted activities.

WE WILL NOT repudiate the grievance/arbitration provisions of our collective-bargaining agreement with

Laborers' International Union of North America, Local No. 373, AFL-CIO, the limited exclusive representative of our employees in the following appropriate unit:

All laborers employed by us at our Homewood Mini Mall jobsite; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Robert E. Whitsett immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed, and WE WILL make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL notify Robert E. Whitsett that we have removed from our files any reference to his discharge and that we will not use the discharge against him in any way.

WE WILL honor the terms of our collective-bargaining agreement with the Union and specifically WE WILL adhere to the grievance/arbitration provisions of that agreement.

R. B. CONTRACTING CO.